

## **North Dakota State Planning Self Evaluation Report September, 2001**

The past two years of North Dakota state planning efforts have involved a wide range of participants, if not a large number of participants. North Dakota, as with most sparsely populated states, has a limited amount of financial and human resources to invest even in a major undertaking such as state planning. However, the participants have been earnest, if not always reaching consensus. The following self evaluation will be frank and relatively short.

Please keep in mind that North Dakota is primarily served statewide by one LSC funded statewide program, Legal Assistance of North Dakota. That is why, in the July 12, 2000 report of the Joint Committee on Legal Services to the Poor to the Legal Services Corporation, there is regular reference to LAND and recommendations regarding LAND even though the organizational recommendation of the committee called for a study of a statewide judicare program with offices on the Reservations. This explains why many of the difficult access issues are addressed to and by Legal Assistance of North Dakota primarily. This, even though it is recognized that ultimately a unified effort statewide will take equal access to yet another level.

### **1) To what extent has a comprehensive, integrated and client-centered legal services delivery system been achieved in a particular state?**

In terms of consolidation of Legal Services Corporation grantees, there has not been much papered progress. In terms of discussion around the need for multiple legal service delivery entities in the state, whether or not funded by the Legal Services Corporation, there has been much discussion by the Joint Committee on Civil Legal Services to the Poor and its expanded State Planning Committee.

The Joint Committee is composed of lawyers, judges and lay persons appointed by either the State Bar Association of North Dakota, the North Dakota Supreme Court, or the legal services providers in concert. The history and composition of the Joint Committee and the expanded State Planning Committee is in the 2000 Joint Committee report sent to the Legal Services Corporation in July, 2000 and in the update to the original 1998 State Planning Report sent to the Legal Services Corporation in April of 2000. Those reports addressed the issues discussed and recommendations made or actions taken in response to the seven area identified by the Legal Services Corporation in its 1998 Program Letters. In fact, the Joint Committee Report of July 12, 2000 is the corner stone of the state planning effort in North Dakota.

The assessment of what has been achieved is a reflection on the content of those reports, information gleaned during the preparation of those reports, and events

since the submission of the most recent of those reports. This is not only true for this first issue presented in Program Letter 2000-7, but for the responses to the remaining two issues as well.

The two boards of the Legal Services Corporation funded programs wholly based in North Dakota have informally discussed the concept of consolidation. Without committing to a consolidation formally by either board, a board member from each program has been designated to take the lead in working with the Legal Services Corporation and in assessing what that step would mean for clients and the organizations and what it would take to effectuate such a consolidation in a timely manner so as not to force a competitive bid among legal services providers in 2002. The winter meeting of each of the boards is being targeted as the meeting when each of the boards will take formal action on the next step in the process. One of the highest priorities is that the quality and quantity of services, particularly to the Reservations, be improved. Stabilization of weekly services to Turtle Mountain Reservation and regular outreach to the Spirit Lake Reservation is considered improvement.

The most important issues impacting the client population are access to legal services due to the sparse population as well as the rural and conservative nature of the state. If a service is not constantly visible both to providers and clients, with clients physically distant from each other, it is very difficult to publicize how to access services effectively and economically. Word of mouth, which is still probably the most effective tool for publicizing services, is reduced by the fact that many of the most needy live in very small towns, under 5000, which can't be reached in the same way as with those who live in the larger communities. These larger communities have a range of services not only concretely visible, but whose staff has is more likely to know about additional service providers such as civil legal services, who serve the area but are not physically located there. This has always been a major issue in North Dakota. It is even more challenging on Indian Reservations that do not have a full-time legal services office within their boundaries. In North Dakota that includes the Turtle Mountain and the Spirit Lake Reservations. Both have been served by outreach which has ebbed and flowed significantly over the years. Based on that instability, there is an initial distrust of whomever is starting new outreach services because the residents have no reason to believe it will be any different than past patterns.

Technology versus face to face service and access to technology, when it is clear that face to face service cannot continue, is another important issue for clients. Even though the resistance to technology is ebbing somewhat in the rural areas, clients reported that a number of rural ranchers especially in the western part of the state, see the use of computers and access to products and services by computer as the "beginning of the end."

For those who are inclined to use them, there are centralized locations such as libraries or major service providers in the most populated counties which do or could furnish public access to computers and Internet access. However, for those not living in these communities and who can't afford a computer or Internet access if they have a computer, access via computer technology is still not a viable option. This leaves the most rural client not only unserved but still isolated and vulnerable. Out of North Dakota's fifty three counties, there are about 12 counties, anchored by towns of 4,500 or more, which have a library with public Internet access and the capacity to provide referrals to out of town service providers. The remaining 41 counties contain only about 30% of the population, but again we are talking about equal access for the most rural low income persons in North Dakota.

The use of toll-free access numbers is prevalent in North Dakota. Legal Assistance of North Dakota operates a toll free centralized intake system 5 days a week. At the client/provider meeting however, there was discussion about the difficulty of getting through to legal services when trying to access the statewide toll-free number. Problems identified included

- Ø not being able to get through because the line was busy
- Ø not elderly friendly in getting through the menu system
- Ø talking only with the elderly person and not a relative or community service provider for intake purposes.

If the centralized intake concept continued, they saw a definite need for individuals needing what they called elbow support at the client end. This is crucial for the clients with difficulty communicating effectively over the phone or who don't have the perseverance to continue to call or hold on the line until gaining access to service.

There has really has been no major breakthrough in this difficult area other than the commencement of weekly outreach to the Turtle Mountain Reservation in north central North Dakota in February, 2001. Turtle Mountain has the largest "on or near" Reservation population in North Dakota. Outreach efforts coupled with community education sessions and a radio call in show this summer has resulted in a sizeable client contact increase over previous years. Jim Fitzsimmons, Executive Director of North Dakota Legal Services, and a lifetime legal services Indian Law practitioner in North Dakota worked closely with LAND staff on effective ways to initiate and build contacts and he also staffed cases with the LAND staff for the first few months providing technical assistance and referral information which greatly accelerated their learning and visibility curve, and thus access for clients.

Although we keep slowly moving forward in our use of technology, human and financial resources have prolonged the development of an Internet eligibility application for services and for access by legal services staff and active members of the State Bar Association's Volunteer Lawyers Project to poverty and other relevant substantive law online repositories.

Substantively, the most pressing area of law in the eyes of clients and community service providers, is that of family law. The areas most often cited are legal services for victims of domestic violence in protection orders, divorces and custody matters. Assistance with child support matters on both sides is mentioned frequently as well. Durable powers of attorney, especially for the elderly have also been identified as a critical need. All legal services providers give priority to domestic violence cases. Major resource issues come into play with the extended divorce and custody needs of victims. Programs without additional funding from sources such as the Violence Against Women Act more as a safety net for these type of cases if other providers are not able to accommodate the requests for assistance. Programs uniformly applied for federal funding to cover different, particularly rural areas of the state since the advent of the Civil Legal Assistance funding. LAND hopes it's most recent proposal to the Department of Justice will be funded and equalize access in rural southeastern counties to those victims in the rural western part of the state who are served by North Dakota Legal Services. The pilot project on pro se divorce for low-income persons in two North Dakota counties continues, but has not been expanded. Input from practitioners indicate that although the project is providing access to the courts for simple divorces, post judgment issues, based on a lack of understanding of the scope and finality or lack thereof, of divorce decrees, are not unusual. The next step would be to create a clinic to prepare plaintiffs more thoroughly in the law and practice and possible outcomes of the divorce process.

The delivery system in North Dakota has really not changed over the past 3 years. The programs are certainly working more closely than before, with the possible exception of Legal Assistance of North Dakota and North Dakota Legal Services. These two programs have had a close and respectful, if not always agreeable working relationship for over 20 years sharing legal expertise, implementing joint special project grants, entering into subcontracts to improve access for clients in the west central part of the state, sharing text and experiences on personnel policies and daily operational administrative practices and publishing a joint client oriented newspaper. Early policy decisions which

- Ø allocated North Dakota Migrant funding to Minnesota due to the relatively small LSC grant available to North Dakota,
- Ø included Standing Rock Reservation as part of the South Dakota Native American service area,
- Ø located the only law school in North Dakota in Grand Forks, and
- Ø transferred control of Volunteer Lawyer Project, previously funded with LSC dollars, to the State Bar Association of North Dakota in 1996,

make significant reconfiguration a difficult challenge.

The most significant movement impacting the statewide delivery of legal services focuses on the Law School. The University of North Dakota School of Law is in the process of converting the clinical legal aid program into a more traditional clinical education program. In the spring of 2001 the Dean of the law school announced that the clinical program will transition into a program that does not accept “soft” outside funding and would sever its dependence on such outside funding. This soft funding, from diverse sources, is used to allow the clinical program to function as a legal aid program. Among those funders, Legal Assistance of North Dakota has been the only continuous core funding source, subcontracting funds to the clinical program since 1980 to maximize resources instead of putting a separate full time office in Grand Forks. Grand Forks is the third largest town in North Dakota and Grand Forks County has had the second highest poor population in the state. Through months of discussion, it appears that instead of eliminating legal aid work entirely from the clinical program, the Dean has decided that the law school must continue the subcontract with LAND and therefore continue law student and law school involvement in the delivery of legal aid services in Grand Forks County. Strong input from some faculty, judges and the bar, particularly in Grand Forks, about the importance of the clinical legal aid program and the knowledge that LAND would continue to provide services to the county outside of the law school if need be, supported the Dean’s decision. This conclusion is in keeping with the recommendations of the Joint Committee made a year before the Dean announced the change in focus.

North Dakota has not even broached the comprehensive performance review concept, let alone developed anything along that line. Eventually that will come about, but for the present the criteria and conditions by grantors for the various legal services providers is seen as adequate. After the state wide delivery system structural issue has been substantially addressed, the focus may turn to performance review. Legal Assistance of North Dakota has already adopted the Civil Standards, but does not do a formal evaluation of the program based on those standards.

There is still not totally equitable access throughout North Dakota. As long as there is uneven funding among providers it will be very difficult to achieve, especially for the Native American population who live on or near the Reservations, and for the migrant population living outside of the Red River Valley. To assure equitable access, the providers plan to work on the recommendations of the Joint Committee and build on the current joint efforts in printed/Internet community education materials, use of toll free access, completing the capacity for Internet access to services, coordinating case priorities with the State Bar Association’s Volunteer Lawyer Project, and reinstating selected outreach sites. The issue of access for Native Americans was addressed above. There has also been discussion that since the number of attorneys and law students working on legal aid matters at the law school is reduced, the possibility of centralized intake screening, advising and making referrals to the clinical program as it does for the Legal Assistance of North Dakota regional law offices, will be explored. Finally, Legal Assistance of North Dakota is working on a grant from the Bush foundation to assess the pros, cons, and general feasibility of a statewide all provider centralized intake in North

Dakota, with a component to address a funding plan for start up costs should the study result in a recommendation to proceed.

The technology initiatives underway at this time are those that were funded by the Legal Services Corporation Technology grant in the fall of 2000. They have been proceeding slowly due to extremely limited staff and staff time vis a vie the demands of centralized intake and ongoing case work. The grant awarded was minimal.

The delivery of legal services in a rural agricultural western state like North Dakota is all about delivery to disadvantaged populations. Earlier in this report were discussions of services to rural poor generally and Native Americans. The services to migrants has not expanded dramatically during the past three years. Even the Migrant Legal Services component of Southern Minnesota Regional Legal Services, with its experienced staff and more abundant resources is dealing with funding reallocation and restructuring. The elderly are the recipients of more personalized service, generally, than the overall population due to the infusion of funds from Title III of the Older Americans Act. However, as noted above, the access on the toll free line is problematic for many elderly. Services to the elderly are outreach intensive. However, there has been no significant restructuring or extension of those services during the past three years.

The client population in North Dakota is not cohesive. They are spread out geographically. There are very few organized client groups and those are tenuous. In the late 1970's and very early 1980's there were client councils and a state client's council, there was a statewide senior's advocacy organization, and the community action programs were strong advocates of the poor on policy issues. In that climate, legal services providers were able to work with clients on community economic development, on legislative advocacy and other major issues and skills. Therefore the potential of identifying and cultivating potential leaders from the client community was at least feasible. Even then it took a significant amount of time. Today the political and resource mobilization environment for policy advocacy in North Dakota has diminished markedly. There is no senior organization, the community action programs still work on important issues like self reliance and housing counseling, but the policy advocacy is essentially gone. It is difficult to find community organizations who can identify client eligible persons to become involved in advocacy or other non local community initiatives. There are still locally active client eligible persons, few though they may be, but at the present time most programs have not had the time to address how these people can be cultivated and supported in a way that benefits legal services delivery and access.

As far as the active participants in the effort to create state justice communities, the leaders are primarily the Joint Committee, which includes a female former client leader who has risen to the directorship of the state's nonprofit association. The Joint Committee is just under half female. The expanded joint committee which prepared the July 2000 report and recommendations included a female elderly client eligible person and a female client eligible Native American. Both come from rural communities. The judge, legislator and two of the attorneys hail from rural communities. Attendees at the client/provider conference reference above included a representative of the Protection and Advocacy

program, Native Americans, a victim of homelessness, domestic violence providers, and elderly and elder service providers.

The Joint Committee will continue to work with legal services programs on the recommendations and the creation of a state justice community. However, their latest official position is that they do not want to be the statewide entity responsible for the ongoing development and implementation of the state justice system. It will most likely be up to the legal service providers to ensure that the system is client centered.

As stated in the introduction, the next and most important step, one that will use all and more of the staff, time and monetary resources available, will be the work toward consolidation of Legal Assistance of North Dakota and North Dakota Legal Services. Resources aside, organizationally that issue needs to be addressed first because many of the integration pieces are built on the delivery structure. At the client/provider conference, the consensus, especially of the clients, was that from a delivery and access perspective more local programs were better for clients than one statewide program. The issues of concern were addressed on page one. The role of clients in the next steps will be ensuring, through feedback at special local or regional meetings, what additional concerns need to be addressed - assuming a statewide program is established - what is the priority of implementation of the recommendations of the Joint Committee regarding major areas 1-6, and whether there are any other recommendations not mentioned that should be given priority.

The two greatest obstacles to devoting to undertaking the methodical and thorough process called for in creating a state justice community have been the lack of time and financial resources. The Corporation suggests establishing another entity to take responsibility for the ongoing oversight of the state justice community effort. It is extremely difficult to find the people with the skills and time to take this on. Since North Dakota is a state with a very small population, including that of the judiciary and the bar, the same people are called upon again and again for multiple community projects, bench and bar committees and initiatives as well as their professional duties. This obviously limits either what those people can do if successfully recruited or whether they can be recruited. As a practical matter, as with many committees, it is the paid staff that does the leg work and presents the information to the committee to act upon. The staff at both the North Dakota Supreme Court and the State Bar Association of North Dakota would find it difficult to provide ongoing support to this effort in addition to other job responsibilities. This may change in the future if the time is allocated to prepare a successful organizational development grant. However, as with the other activities, the consolidation issue needs to be the current focus of resources. It may well be possible that a year from now the Joint Committee will be more willing to take on the oversight responsibility once the difficult issue of consolidation and delivery structure has been resolved. It would be the most appropriate existing entity to perform this function and it would not require the creation of a new body.

Above and beyond the creation of an oversight entity, is the availability of legal services staff time and resources to implement positive changes or enhancements in a timely



manner given the ongoing workload. It's not that it is impossible. It's that it takes much longer to implement than is desirable and even once developed, upkeep could be spotty. Take for example a coordinated community education web site and production center. The oversight of that effort would need to be taken on by a existing staff person with either major management responsibilities or with major case or intake responsibilities. It is easy to say cut back on intake or cut back on cases to set up task forces or oversee community education publications, but for each of these many potential improvements come a cost in either management responsibility or case work. Again, this is not to say it can't be done. This is to say that without extra staff whose major responsibility is to develop, implement and initially coordinate each new undertaking, progress will be made at a snails pace.

Because of the extended discussion regarding the efficacy of taking the time and resources to study the judicare model as the core of a statewide delivery system by the Joint Committee, no detailed work has been done on the cost of a new statewide system. The programs involved are moving ahead on the premise that statewide delivery for basic field and Native Americans, other than Standing Rock Reservation, is in the best interest of clients for both access and quality of service. The cost effectiveness of changes in community education, training, involvement of private attorneys, use of technology, fund raising and all of the other issues will be done on a case by case basis. If cost savings aren't evident, there certainly should be quality improvements that would make change advantageous, if the changes proposed are to be implemented.

Having a consultant knowledgeable in rural and Native American delivery needs, experience with consolidations, as well as practical tips for developing and implementing change with extremely limited resources would be wonderful. It would take an individual with strong, but subtle leadership talents, as well as the needed expertise. That person would also have to understand and be able to work within the concept of "the philanthropic divide" in advising on resource development. There are individuals that are knowledgeable and willing to come and give a presentation or lead a discussion on a given topic or topics for little or no cost, but they won't be effective until there is that first guided, effective excursion into what's really possible and why it's possible, by a credentialed professional. North Dakota needs the ability to thoroughly explore what other programs, legal services or not, are doing in the same area or explore a totally new concept with the staff support needed to develop a thoughtful and successful plan for either piloting or implementing the concept. That kind of undertaking requires adequate human resources. In areas other than technology, much could be done without major capital investment. However, technology is capital intensive and in North Dakota where many rural areas don't have access to a local Internet service provider, don't have access to high speed Internet access, don't have access to video conferencing, it becomes a technological challenge. For example, Qwest provides Internet service at up to 4 megs DSL speed, but as an Internet service provider, can't support that speed in Bismarck, North Dakota. The capital needed to attain the position where technology can actually help in the delivery of services would be a major step in the right direction.

1. To what extent have intended outcomes of a comprehensive, integrated client-centered legal service delivery system been achieved including but not limited to service effectiveness/quality; efficiency; equity in terms of client access; greater involvement by members of the private bar in the legal lives of clients, and client community empowerment?

With regard to the major issues impacting on clients as set forth in Statement 1 above, the recommended Joint Committee response to the issue of access was set forth in their July 2000 report. Possible funding from the Bush foundation for a feasibility study on the effectiveness and cost effectiveness of a statewide gateway centralized intake system has been discussed with a foundation representative. As time allows, the information needed to prepare an effective proposal is being compiled. The original time frame called for the proposal to be submitted by June 1 if possible, if not, by September 1, 2001. LAND submitted a senior hotline competitive grant proposal to the federal Administration on Aging in 1999 and 2000, but did not receive funding. The proposal would not only have added staff and a dedicated toll-free line to the centralized intake unit to work exclusively with seniors through the hotline and through community education, but also piloted computer access for seniors from a rural community and the most populated Reservation in North Dakota. It would have allowed existing staff to focus on expanding the capacity to work with non-seniors statewide and thus take callers from all service areas in North Dakota once program protocols were developed.

Steps taken by the Centralized Intake Unit expanded the category of callers who could request assistance on behalf of seniors. Those seniors who still had problems getting through could have an intake interview done by a local office as well.

The Centralized Intake Unit will have the capacity to do roll overs of calls to other offices as soon as the LAND Internet wide area network is in place. Due to extreme technical difficulties, particularly with QWest, progress on this important step has been delayed again and again. The WAN connection is critical because it allows the other offices to enter the intake information into the case management system contemporaneously, as happens in the main centralized intake office reducing the input work for Centralized Intake and keeping conflict information current as well as making it feasible to generate required client documentation at the same time. Currently, Legal Assistance of North Dakota has the capability to print new intake applications at the remote case management site on that site's printer as they are ready for extended case assignment.

Access specifically to family law services was not addressed in the Joint Committee recommendations, however the legal services providers, whether or not LSC funded, met and discussed how to cover the state on domestic violence protection orders in the spring of 2001. North Dakota Legal Services and the law school clinical legal aid program are current recipients of Department of Justice

Civil Legal Assistance funds in the state. Legal Assistance of North Dakota submitted a Civil Legal Assistance proposal to serve the remaining Reservation and the southeastern part of the state this spring. A decision on the grant is pending.

The Centralized Intake Unit increased the number of cases closed in 2000 over 1999 and is may do so again this year. During 2001, LAND restructured and closed its Devils Lake law office enabling LAND to add two positions in other offices. One of the positions was an additional attorney in the Minot Office, which houses the Centralized Intake Unit. The new attorney does centralized intake work as well as carrying a caseload as do all legal staff in the Minot Office.

With regular weekly outreach to the Turtle Mountain Reservation and an intake office in Belcourt, the number of cases closed for the Native American Unit has already exceeded that of last year. With the increase in funding for services to the Turtle Mountain and Spirit Lake Reservations, LAND was also able to add another attorney to the Minot staff, making the weekly outreach and usually twice weekly trips to Belcourt much more sustainable over the long term.

North Dakota is primarily Caucasian at 92.7% according to the 2000 census. 4.9% of the population is Native American and 14.7% are 65 or over. These groups contain the largest number of diversity populations in the state. At a total population of 642,000 statewide, about 592,000 are Caucasian, 32,000 are Native American and about 94,000 are 65 years of age or older. A large number, but under 50% and shrinking, are considered rural.

With the advent of web sites, closer coordination in the publication of community education materials, a sharing of expertise in the area of Native American outreach and law by North Dakota Legal Services, the newly launched joint Dakota Training Conference for legal services providers of both states including PAI and volunteer lawyers, and the first formal steps by the Supreme Court to address the area of pro se representation and unbundled services, it is clear that there have been improvements overall in the depth if not the actual range of services provided. The gains in these areas are strengthened by the Joint Venture agreement between LAND and Southern Minnesota Legal Services. That Agreement addresses working more closely with Migrant Legal Services through the coordination of non case legal support and technology matters; by the assignment develop a work plan to address unbundled legal services in North Dakota to a standing committee of the Supreme Court and by the successful conclusion of the first ever Dakota Training Conference with plans for next year already in the works.

Development/fund raising has been a difficult issue in North Dakota as referenced earlier regarding the philanthropic divide. The achievement of both filing fee surcharge funds and the initiation of IOLTA both took place over a decade ago.

The IOLTA grants are a joint endeavor of all the legal services providers even though there are three separate applications for the six service providers, four programs submit a single application, with the State Bar Association submitting a separate application for the Volunteer Lawyer Project and Southern Minnesota Regional Legal Services submitting a separate application for its Migrant Legal Services Unit. The four legal services providers and Migrant Legal Services coordinate their submissions even though done separately.

Ever since its inception, the filing fee surcharge funds have been allocated based on a formula developed among the Legal Services Corporation funded programs and approved by the Indigent Civil Legal Services Committee, a creature of state law. By law, only Legal Services Corporation grantees are eligible to receive these funds. When the University of North Dakota School of Law clinical legal aid program stopped receiving LSC subgrants from Legal Assistance of North Dakota due to the 1995 and 1996 newly imposed restrictions, the programs requested an affirmative opinion from the Indigent Civil Legal Services Committee allowing Legal Assistance of North Dakota to pass on surcharge funding to the clinical program. The Committee's opinion was positive. This allowed major funding to continue to flow to the clinical program to provide clients with services in Grand Forks County and Spirit Lake Reservation as well as the opportunity for about 25 law students to gain clinical legal aid experience. Many of the Volunteer Lawyer Project panel members today participated in the clinical legal aid program at the law school learning first hand about the need for legal aid services and the help of the private bar in delivering those services.

Equitable formulas or joint agreements for the distribution of filing fee surcharge and IOLTA funds have been developed by the programs. The paucity of foundation resources and other major sources of funding in North Dakota severely limit the ability to raise additional substantial ongoing funding. Attorney campaigns have been tried by LAND with the assistance of Dennis Dorgan shortly before he went on board the Fund Raising Project. It was successful in the two largest towns in which LAND had law offices. In the other parts of the state contributions were negligible. Other attorney campaigns in North Dakota are conducted by the North Dakota Bar Foundation and the University of North Dakota School of Law. Their success is usually reported as modest.

Even though the state as a whole suffers from lack of development sources, the most rural counties, which are all of the counties except for Burleigh, (Bismarck) Cass, (Fargo) and Grand Forks, are virtually resourceless. The Reservations of course have tribal funding and all of the Reservations have casinos. Even so there is great need which these funding sources need to address. On occasion it has been possible to get some funding for a limited time. There are drawbacks to tribal funding are the possibility of the politics of accepting the money and incurring certain expectations that might not dovetail with what the legal services provider is doing, and the possibility that the funding may be suddenly cut or ended based on a change in the political or financial situation.

The most productive source of foundation funding outside of North Dakota has been in Minnesota. There are 3 major Minnesota foundations that regularly fund projects and organizations in North Dakota. They are Bush, Bremer and Northwest Area Foundations. LAND, NDLS and the University of North Dakota have all applied for and received some funding over the years from these foundations. In the early 1990's Northwest Area Foundation changed its giving philosophy from funding organizational projects to funding communities in need. There are also other potential federal funding sources, but a grant application or response to an RFP may have to wait until a statewide proposal can be developed. Possibilities include HUD, Department of Justice and HHS.

Upon the foundation of extremely scarce financial resources comes the few building blocks provided by the pro bono work of attorneys throughout the state, whether or not part of the structured Volunteer Lawyer Project. I am sure that a high percentage of attorneys in the rural areas do pro bono work. However the vast majority of law firms in North Dakota, let alone in the rural areas, are small compared with most other states. Law firms of one or two attorneys have a much reduced ability to take non paying cases of any substance, no one to back them up if one or both are not in the office and much more likely to run into conflicts of interest. In the least populated counties, the one or two attorneys are usually taking turns being the States Attorney on a part time basis, adding to the conflict dilemma. Of course in the biggest towns, where there might be a 20 member law firm and a number of firms composed of 6 to 11 lawyers, there is greater ability to participate consistently in pro bono work.

The involvement of Volunteer Lawyers in non case activities has not expanded. The number of PAI contract attorneys and the type of cases assigned and accepted has broadened over the last three years. The offering of one private attorney oriented CLE annually by legal services providers has continued. With the advent of the Dakota Training Conference those training opportunities should be expanded.

There is definitely work that could be done to develop specific pro bono panels or projects. There are not the staff resources to do this at this time. It is an area for possible outside funding in the near future. The Supreme Court has taken the lead with what they acknowledge is a nominal step forward in addressing pro se issues and needs in North Dakota. The next step will also be modest and will take its time coming. However, a positive step has finally been taken and the first step is the most important. The Court is working in concert with the Joint Committee in particular as well as with SBAND.

Work is definitely needed in the efficiency of conducting civil legal services activities. For North Dakota, LSC is requiring that the informal network of the past years be replaced by more formal interactions and structures. Work has started, but needs to be done without creating unnecessary new groups or institutions. There is very little duplication of effort in North Dakota at this point.

If there is duplication, it is more in the nature of providing that elusive equal access to legal representation than different organizations providing the same services.

2. Are the best organizational and human resource management configurations and approaches being used?

Legal Assistance of North Dakota: Virtually statewide. Serves 52 of 53 counties with LSC funding. Serves 53 of 53 counties with Title III Older American's Act funding. Serves the Turtle Mountain and Spirit Lake Reservations with LSC funding. Governed by a Board of Directors in compliance with 45 CFR 1607. Three regional law offices in Fargo, Bismarck and Minot. The Minot office also houses centralized intake and services to the two reservations. LAND also subcontracts filing fee surcharge funds to the University of North Dakota School of Law to serve Grand Forks County through its clinical program. LAND also subcontracts funds to North Dakota Legal Services to serve 4 rural counties around the Fort Berthold Reservation. LAND contracts with private attorneys throughout North Dakota to supplement the work done by its law offices. Additional funding sources for LAND include the filing fee surcharge Indigent Civil Legal Services fund, IOLTA, Title III Older American's Act, Bremer Foundation grant to finish up cases started as a result of the 1997 flood of the Red River Valley, and funding from 5 local United Way agencies. The total revenues projected for 2001 is \$1,185,109.

North Dakota Legal Services: Primarily and Indian Legal Services program in west central North Dakota. The office is in Newtown which is within the exterior boundaries of the Fort Berthold Reservation. NDLS receives LSC funding to serve the Fort Berthold Reservation and McKenzie County. NDLS also has a Department of Justice Domestic Violence Civil Legal Assistance grant to serve 11 rural western counties and the Reservation. NDLS contracts with private attorneys in its service area to supplement the work done by its law office. Additional funding comes from the filing fee surcharge Indigent Civil Legal Services fund and IOLTA. Total revenues reported on the most recent audit for the period ending May 31, 2001 were \$233,499.

State Bar Association of North Dakota: The State Bar Association of North Dakota, SBAND, operates a statewide Volunteer Lawyer Project and Reduced Fee Panel in North Dakota. The Volunteer Lawyer Project is an opt out system. Any attorneys who do not opt out are called for placement of cases. The vast majority of calls received and referrals made to the Project are in the area of family law. Over the past years the Project has consistently closed about 400 cases a year. The number of lawyers licensed and in practice in North Dakota is about 1250-1300. The types of cases accepted by the Project are a product of meetings with LAND and NDLS directors on their priorities and the areas of need, the areas of interest by the attorneys who volunteer, and the input of the members of the SBAND standing Volunteer Lawyers Committee. There is very

close coordination is in the area of family law and domestic violence and emergency guardianships. The financial eligibility guidelines were initially identical to those of Legal Assistance of North Dakota, who established the Project with SBAND in 1985. Currently, the guidelines differ slightly, but the LSC income and legal aid income and asset guidelines are reviewed in revisions to the Project guidelines. The Reduced Fee Panel cases are those that are not seen as being as critically important as the Project cases. The Reduced Fee Panel takes primarily family law cases in the areas of uncontested divorces, contested divorces that are not taken by Project attorneys, contested custody, durable power of attorney, uncontested adoptions, and name changes. Divorce mediation services by lawyers certified in the area of family law are also offered. Simple wills are also done. The Volunteer Lawyer Project is funded solely with IOLTA funds and the Reduced Fee Panel is funded in part by fees paid by attorneys on the Lawyers Referral Service Panel and persons who receive referrals to the regular Lawyers Referral Service panel. The current budget is \$46,985.

University of North Dakota School of Law: Delivers legal aid services to residents of Grand Forks County, the county in which it is located, and the Spirit Lake Reservation, which is located approximately 104 miles west of Grand Forks. The function of the clinical program at the law school is in transition. Since the mid 1970's when the in house clinical program was established, it has operated as a legal aid office. The purpose was clinical education for law students in a way that would serve the community and not compete with the private bar. Funding for the clinical legal aid services was provided by a number of sources over the years in addition to the modest core contribution out of the law school budget. The only other consistent annual funding since 1980 has been from Legal Assistance of North Dakota. In order to maintain clinical programs which serve the Spirit Lake Reservation and Grand Forks County, funding was sought from other state and federal sources. That soft funding is shrinking. The decision was made to convert the clinical legal aid program into a clinical education program which accepted very few cases, preferably unique or significant cases that would provide a range of legal experiences to participating law students. The number of students enrolled would most likely be limited to 8 to 10. As explained earlier in the report, pressure from the legal community has made it clear to the Dean of the University of North Dakota Law School that he has the support to continue some legal presence at the law school. His challenge is to do it in such a way that it does not drain or draw on the monetary resources of the law school which are already considerably stretched. For the next 10 months the law school will continue to contract with Legal Assistance of North Dakota to have an attorney on staff to work with law students in serving low income persons in Grand Forks County. What will happen after that depends on law school politics, financial resources and the productivity of the clinical legal aid services. Legal Assistance of North Dakota subcontracts filing fee surcharge funds and to the clinical program and passes through IOLTA funds. The clinical program also has a grant from the Department of Justice Civil Legal Assistance for victims of Domestic

Violence which has a little over one year of funding left. Those are the funds the clinical program is now using to serve the Spirit Lake Reservation. The acting director of the law school clinical program did not have an exact amount available, but the amount is over \$250,000.

Dakota Plains Legal Services: This South Dakota based, LSC funded, primarily Indian legal services program has an office in Fort Yates, North Dakota, which is the seat of government and the court system for the Standing Rock Reservation. That Reservation straddles the North Dakota/South Dakota state line, with a slightly greater part of the geographical area in South Dakota. Dakota Plains Legal Services also serves the Lake Traverse Reservation, which also straddles these state lines in south eastern North Dakota. However the seat of government and all but 191 of the tribal residents live in South Dakota. In addition to the Legal Services Corporation, Dakota Plains Legal Services receives funds from the North Dakota IOLTA program, and the North Dakota filing fee surcharge Indigent Civil Legal Services fund. Its budget for the year 2000 was \$123,843.

Southern Minnesota Regional Legal Services, Migrant Legal Services Unit: Migrant Legal Services North Dakota office is located in Fargo North Dakota and serves the Red River Valley area of Minnesota and all migrants in North Dakota, the vast majority of which live in the Red River Valley. The Fargo office is supported by funding from the Legal Services Corporation, the North Dakota filing fee surcharge Indigent Civil Legal Services fund and the North Dakota IOLTA program. The office has also supplemented its funding with Minnesota state revenues. The Migrant Legal Services office is located in the same building as the Fargo Legal Assistance of North Dakota office the LSC funding level for North Dakota is \$104,611.

The expanded Joint Committee looked seriously at recommending the Standing Rock Indian Reservation be served out of North Dakota and combined into the state wide service area, but decided against that alternative. There was also discussion about serving the North Dakota migrant population by the North Dakota state wide legal services provider whether that be LAND or a new judicare entity. That idea was also dismissed based on the need for expertise, the co-location of the population along the Minnesota/North Dakota border, and the supplemental funding being currently provided by Southern Minnesota Regional Legal Services.

The final recommendation of the Joint Committee, based on the reports from the expanded committees was to study the creation of one statewide judicare program with a central office and an Indian Law component with staffed offices on the three Reservations currently being served by North Dakota programs. It was at this point the work got bogged down in determining whether LSC would fund such a study and whether LSC had a policy perspective on the judicare delivery method as the core of a statewide civil legal services delivery system. That issue has now been clarified by LSC, but the Joint Committee decided that it did not



want to continue to take responsibility for ongoing oversight of the development of a state justice community in North Dakota. It will continue working on at least some of the recommendations in its report that were ascribed to the Committee. The only change being addressed at this time is as stated above regarding Legal Assistance of North Dakota and North Dakota Legal Services. There are no others contemplated in the future due to the types of organizations, structures and service areas of the other service providers. The only possibility is that if the subcontract with the School of Law does not work out under the new clinical education concept which will control the Law Schools allocation of resources, LAND or its successor organization would find an alternative method of delivering services to Grand Forks County with LAND staff.

There is very little duplication going on in North Dakota at the present time. The case management systems of LAND, NDLS and Dakota Plains are the same, Kemps Clients for Windows. If the subcontracting with the University of North Dakota clinical program continues, that component will be operating on the same case management system as well. LAND and NDLS use the same fiscal officer. As stated earlier, the programs either do joint proposals for state funding or agree on a formula for state funding. There have not, however, been any truly joint foundation grants among programs in a number of years. The Bush Foundation grant proposal however, would need the cooperation and support of all providers in North Dakota since it addresses a statewide centralized intake gateway to civil legal services.

There have been no truly innovative delivery systems established since October 1998. However, LAND established its virtually state wide centralized intake system in June 1998. That system is still evolving.

### **Closing**

As discussed at the beginning, Legal Assistance of North Dakota and North Dakota Legal Services have each selected one board member to be a point person for the politically sensitive work on the consolidation issue. Due to scheduling difficulties these board members were unable to meet with Tim Watson, LSC State Planning contact person for North Dakota, when he was here the week of September 9, 2001. These board members will be contacting Mr. Watson regarding questions they have and further direction from the Legal Services Corporation in the near future and perhaps setting up another trip to North Dakota to be able to meet face to face. The steady progress of creating a state justice community in North Dakota in the immediate future will hinge on the progress these representatives can make and the ability of the Legal Services Corporation to provide ongoing support, information and technical assistance as well in a timely manner.